HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No. 3075 of 2006

Between:

Singareni Collieries Co. Ltd.

Lakdikapul, Hyderabad represented by

its Chairman and Managing Director,

Shri R.H.Khwaja and others .. Petitioners

AND

The Gram Panchayat, Bhoopalpalli,

Represented by its Sarpanch Shri Burra

Chandraiah r/o Bhoopalpalli and others ..Respondents

Counsel for the Petitioners: Shri D.Prakash Reddy, Senior Advocate assisted by Smt G.Vijaya Lakshmi

Counsel for Respondent No.1: Shri S.R.Ashok, Senior Advocate assisted by Shri P.Prabhakar Reddy.

Counsel for Respondents No.2 and 3: Government Pleader for Panchayat Raj and Rural Development.

Dated: February 23, 2006

ORDER:

Per G.S.Singhvi, C.J.

This is a petition for quashing communication dated January 16, 2006 sent by the Sarpanch of Gram Panchayat, Bhoopalpalli to General Manager of Singareni Collieries Company Limited, Bhoopalpalli (petitioner No.3) rejecting the latter's request for compounding of tax payable under Section 71 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act').

It is borne out from the record that the issue relating to payment of property tax by petitioner No.1 became subject matter of Writ Petition No.21075 of 2005 filed by the
Gram Panchayat. In that case, the petitioner had prayed for issuance of a direction to Project Officer, Singareni Collieries Company Limited and its other functionaries to pay property tax. The same was disposed of by the Division Bench on December 13, 2005 with a direction to the petitioner therein to consider the application made by Singareni Collieries Company Limited (petitioner No.1 herein) for compounding of tax. The relevant extract of that order reads as under:

> "In this view of the matter, as learned counsel for respondent Nos.1 and 2 submits that an application for compounding of tax has already been filed by them on 13-10-2005, we direct the petitioner to consider the said application and pass appropriate orders."

In furtherance of the direction given by the Court, the Gram Panchayat considered the application made by petitioner No.1 for compounding of property tax and rejected the same vide resolution dated January 8, 2006. The decision of the Gram Panchayat was communicated by the Sarpanch to the General Manager of petitioner No.1 vide letter dated January 16, 2006, the relevant portions of which are reproduced below:

> "The Gram Panchayat, Bhupalpalli is situated within the radius of 5 KMs having 18 colonies apart from the main village the population in the Bhupalpally village is more than 80,000. The Collector, Warangal has also recommended to upgrade the Gram Panchayath as Municipality and the same was postponed due to lack of funds by the Government. To meet the needs and amenities of the population, the Gram Panchayath require huge amounts to incur expenditure in providing drinking water, sanitation, formation of roads, power and plantation of trees to avoid pollution in the village.
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> The Gram Panchayath has to form roads to a length of 100 KMs and drains on either sides and also to plantation of trees to avoid pollution in the village due to the mining operations and vehicle movements of Singareni Collieries, which require more funds. So far, the Gram Panchayath has formed C.C. roads only 20 per cent under the Gram Panchayath limits. There is no proper water pipe lines to supply drinking water to the public, most of the construction under the Gram Panchayath limits of Bhupalpally are belongs to Singareni Collieries, without total payment of property tax the Gram Panchayath, Bhupalpally is unable to provide amenities to the public.
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> The Gram Panchayath Bhupalpally unanimously resolved to recover the property tax from the Singareni Collieries by issuing a warrant of attachment and sale of movable properties for recovery of the property tax due to the Gram Panchayath. The Gram Panchayath unanimously resolved to issue attachment of warrant of movable

properties after rejecting the request of the Singareni Collieries in giving concession of 50 per cent of property tax.

Therefore you are hereby directed to pay the property tax within (6) six days from the date of receipt of this notice, failing which the Gram Panchayath, Bhupalpally is constrained to proceed with the attachment of movable properties and sale for recovery of the property tax."

Sri D.Prakash Reddy, Senior counsel appearing for the petitioners assailed the decision of the Gram Panchayat by arguing that the same is vitiated due to non-application of mind to the enormous material produced in support of the prayer made for compounding of tax under Section 72 of the Act. Shri Reddy invited our attention to application dated October 13, 2005 sent by the Project Officer of petitioner No.1 to the Panchayat Secretary and other documents filed along with it to show that petitioner No.1 and its functionaries have spent huge amounts to provide basic amenities like roads, water and drainage not only to those living within the colony of petitioner No.1 but also in the adjoining areas. Learned counsel laid emphasis that petitioner No.1 has taken up several measures of social welfare, which the Gram Panchayat is required to take for the benefit of the people living within the limit of the Gram Panchayat and argued that the latter committed grave illegality by rejecting the application of petitioner No.1 for compounding of tax. In the end, Shri Reddy submitted that outright rejection of the application of petitioner No.1 should be declared illegal because in terms of Rule 9 of the Andhra Pradesh Panchayat Raj (Payment of Lumpsum Contribution by the Owners of Factories or Contiguous Group of Buildings in Lieu of Taxes) Rules, 1995 (for short 'the Rules'), the Gram Panchayat is required to make a reference to the State Government through the District Collector.

Shri S.R.Ashok, learned Senior counsel appearing for the Gram Panchayat supported the resolution dated January 8, 2006 and argued that the amount spent by petitioner No.1 under the programme SHAPE (Surrounding Habitat Assistance Programme) was rightly not taken into consideration for the purpose of deciding the application made for compounding of tax payable under

Section 71 of the Act. He pointed out that the Gram Panchayat is in acute need of funds necessary for discharge of its primary duties in terms of the provisions contained in the Act and, therefore, no illegality was committed by not accepting the request of the petitioners for compounding of tax. He pointed out that petitioner No.1 did not pay the property tax in terms of Section 71 of the Act necessitating issuance of the impugned demand. In regard to Shri Reddy's plea that the Gram Panchayat should have referred the dispute to the State Government, Sri S.R. Ashok submitted that the same is barred by limitation prescribed under Rule 3 of the Rules. An alternative submission made by the learned counsel is that, it is for the petitioners to approach the Collector for making reference and the Gram Panchayat is under no obligation to make the reference.

We have considered the respective submissions and gone through the record. In our opinion, the decision taken by the Gram Panchayat not to entertain the application made by petitioner No.1 for composition of the tax payable under Section 71 of the Act cannot *per se* be treated as arbitrary and communication dated January 16, 2006 cannot be nullified on the ground of lack of reasons or violation of the rules of natural justice. While deciding the application made by petitioner No.1 under Section 72 of the Act, the Gram Panchayat was not discharging quasi-judicial functions. Therefore, it was not required to pass a reasoned order which a quasi-judicial authority is required to record while deciding lis between the parties. Moreover, a reading of communication dated 16-1-2006 makes it clear that the Gram Panchayat had broadly adverted to the contents of the application made by petitioner No.1 and decided not to accept the same on the premise that the money spent by petitioner No.1 was not sufficient to entitle it to seek concession of 50% of the tax. Therefore, we do not find any valid ground to nullify communication dated
16-1-2006.

De hors the aforementioned conclusion, we are of the view that petitioner No.1 is entitled to seek reference of the dispute to the State Government in terms of second part of Section 72 of the Act read with Rule 9 of the Rules. The argument of Sri S.R. Ashok that in terms of Rule 3, an application for reference can be made within 60 days from the commencement of the financial year or

from the date of functioning of the factory or occupation of the building cannot be accepted because the case in hand is covered by Rule 9 of the Rules which contemplate reference either by the Gram Panchayat or the owner, in the case of disagreement. In the present case, the dispute will be deemed to have arisen on 8-1-2006 i.e., the date on which the Gram Panchayat resolved not to accept the application for compounding of tax made by petitioner No.1. The decision of the Gram Panchayat was conveyed to petitioner No.3 vide letter dated 16-1-2006. Therefore, it is not possible to say that the request of petitioner No.1 for reference of the dispute is belated. In any case, the same cannot be rejected as barred by limitation because no period has been prescribed in Rule 9 for making of reference.

We are of the further view that in the matter like this, it will be in the interest of both the parties that the reference at the instance of petitioner No.1 and its functionaries shall be disposed of by the State Government within the specified time schedule.

In the result, the writ petition is dismissed subject to the condition that the petitioners shall be free to seek reference of the dispute in terms of second part of Section 72 read with Rule 9 of the Rules. To facilitate the making of reference and adjudication thereof, we deem it proper to give following directions:

1. within seven days from today, petitioner No.1 and/or its functionaries may make an application to the District Collector for forwarding the reference of the dispute to the State Government with regard to compounding of tax payable under Section 71 of the Act,

2. within next seven days, the District Collector shall refer the matter to the State Government,

3. within two months from the date of receipt of copy of the reference, the State Government shall, after giving opportunity of effective hearing to petitioner No.1 and its functionaries as also the representatives of the Gram Panchayat, decide the reference by passing a speaking order,

It is, however, made clear that entertainment of reference by the State Government and its decision will be subject to condition that petitioner No.1 and its functionaries deposit a sum of Rs.10 lakhs with the Gram Panchayat within a period of two weeks from today. If the latter comes to the conclusion that petitioner No.1 is entitled to compounding of tax payable under Section 71, the amount deposited by petitioner No.1 shall be adjusted towards the tax dues of the succeeding years.

If the petitioner No.1 fails to deposit the tax, then the Gram Panchayat shall be free to adopt appropriate legal measures for realization thereof.

G.S.SINGHVI, C.J.

February 23, 2006

G. BHAVANI PRASAD, J.

GRR / svs